IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.83 OF 1995

Vishnu Vitthal Dhere]
resident of 3569, Sant Peth]
At post Taluka Pandharpur]
District Sholapur]..Appellant
(Ori.Accused no.1)

versus

The State of Maharashtra]..Respondent
(Ori.Complainant)

....

Mr.P.M.Mengane Advocate for appellant
Mr.A.S.Shitole, A.P.P. for State.

....

CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : OCTOBER 21,2004

ORAL JUDGMENT:

1. Through this appeal, the appellant-original accused no.1 challenges the judgment and order dated 25th January, 1995, passed by the learned Special Judge, in Sessions Case No.2 of 1991 whereby the learned Special Judge Solapur convicted the appellant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act (hereinafter referred to as 'the said Act'). By the said judgment and order, the appellant is sentenced to R.I. for two years and to pay a fine of Rs.2000/- i/d to suffer R.I. for three months for the offence under Section 7 of the Act. In

addition thereto, the appellant is also sentenced to R.I. for one year and to pay a fine of Rs.1000/- i/d to suffer R/I for one month for offence punishable under Section 13(1)(d) read with Section 13(2) of the Act.

. It may be stated here that the appellant along with original accused no.2 i.e. Haribhau Tukaram Pawar faced the trial. However, original accused no.2 came to be acquitted of all the charges.

2. Briefly stated the prosecution case is as under:

. The appellant at the relevant time was a Talathi. Complainant P.W.6 Ankush Sakharam Pawar is an agriculturist. He purchased gat no.241/A from Shivaji Pitambar Bhosale resident of Kharsoli on 5th August, 1980. For entering his name in revenue record, he produced the xerox copy of the index extract in respect of the sale deed before the Circle Officer i.e. P.W. 2 Shri.P.G.Kulkarni. Accordingly, P.W.2 Kulkarni certified the entry on 7.5.1990 and his name came to be entered in the revenue record as holder of the land. The complainant went to the office of Talathi on 30.4.1990 and met the appellant and asked him for 7x12 extract. At that time, the appellant made a

demand of Rs.500/- for giving the copy of the extract. On this complainant contacted the Anti-Corruption Bureau and thereafter a trap came to be arranged. The said trap was arranged on 3.5.1990. After following pre-trap formalities, the raiding party along with the panchas and the complainant went to the office of Talathi on 3.5.1990, however,the office of the appellant was found locked. Hence, the trap failed. The complainant was thereafter informed by the A.C.B. office that again when there is a demand from the appellant, he should contact the A.C.B. office. Accordingly, he contacted the A.C.B. office and on 14.5.1990, the second trap came to be arranged. Again on that day, the office of the Talathi was found locked and the said trap failed. Again 3rd trap came to be arranged on 15.5.1990. After following the pre-trap procedure, the complainant along with panchas and raiding party went to the village Kharsoli.

. It is the prosecution case that on entering into the Talathi office, the appellant was found sitting in the said office. On the complainant demanding 7x12 extract, the appellant gave him 7x12 extract and other documents. Thereafter, the complainant and the panchas left the Talathi office. At that

time, one other person who was assistant of appellant, called out to them saying that the appellant called them. They went back to the Talathi office. Whereupon, the appellant asked the complainant that "ME SANGITALELYA PAISHYACHE KAYA KELE"? (What have you done about the payment of money). Thereupon, the complainant replied "PACHASHE RUPAYEE JAST HOTAT KAHEE TARI KAMIKARA" (Rupees five hundred is huge amount please reduce it). But the appellant stated that "TUMHEECH KHUSHINI JAST DILE PAHIJE" (You should give more amount willingly). Thereafter, the complainant took out the notes from his left pocket of the shirt and handed over to the appellant. The appellant accepted those notes and kept them on the mat. Thereafter, the complainant gave signal and the raiding party rushed in and the post trap formalities were completed. After completion of investigation in the said case, the charge sheet came to be filed.

3. In due course, the charge came to be framed against the appellant i.e. original accused no.1 and original accused no.2 Haribhau for the offence under Sections 7 and 13(2) r.w. 13(1)(d) of the said Act. In addition thereto, the charge under Section 7 and 12 of the Prevention of Corruption

Act, 1988 came to be framed against the original accused no.2 Haribhau. The defence of the appellant is that of total denial.

4. During the course of the trial, eight witnesses have been examined by the prosecution. The star witness is P.W.6 Ankush Pawar who is the complainant in the present case. After going through the evidence adduced by the prosecution, the learned Special Judge convicted and sentenced the appellant as stated in para no.1 above. Hence, this appeal.

5. I have heard Shri.P.M.Mengane, the learned advocate appearing for the appellant and Mr.A.S.Shitole, the learned A.P.P. for the State. I have also perused the record pertaining to the said case. In my opinion, this appeal deserves to be allowed.

6. In the present case, the star witness is P.W.6 Ankush Pawar. He is the complainant in the present case. It is the case of the prosecution that to give him copy of 7x12 extract, the appellant had demanded Rs.500/- from him. However, in the present case, it is pertinent to note that according to the prosecution, the demand for Rs.500/- was made by the appellant to the complainant on 30.4.1990. However,

on that day, there was no question of giving any 7x12 extract to the complainant as the name of the complainant had not yet been entered in the records. The process relating to the same was still going on. It is pertinent to note that a notice had been given to the seller of the land i.e. Shivaji Pitambar Bhosale somewhere in 1989 and on 4.9.1989, the seller Shivaji Bhosale entered his objection. Thereafter, the matter was entered in the dispute register. In respect of this entry the dispute was pending with the Circle Officer i.e. P.W.2 Kulkarni. On 30th April, 1990 when the complainant is alleged to have asked the appellant for 7x12 extract the dispute in respect of the entry, was not over. It was only on 7.5.1990 the Circle Officer P.W.2 Shri.Kulkarni certified the pencil entry and the name of the complainant came to be entered in the revenue record as the holder of the land in question. Thus, it is clear that on 30.4.1990 there was no question of making any demand for the 7x12 extract.

7. In the present case, P.W.6 complainant Ankush Pawar is the star witness. In his examination in chief, he has deposed that he met the appellant and the appellant told him that "something i.e. some money will have to be given to him". The

complainant has further stated that as the appellant-accused demanded money, he went to A.C.B. office at Solapur on 2.5.1990 and narrated this fact. Accordingly, a trap came to be arranged. After following pre-trap formalities, they went to the office of the Talathi. However, the office was locked. Hence, they returned back. Thereafter, the complainant again demanded 7x12 extract from the accused who told him to come to Kharsoli. Again the A.C.B. office was informed. Pre-trap formalities were followed and on that day i.e. 14.5.1990 when they reached the office of the Talathi, again, it was noticed that the Talathi office was locked. Hence, the raiding party, panchas and the complainant returned back.

8. Thereafter, again the complainant contacted the appellant and demanded 7x12 extract. The appellant told the complainant to come to Kharsoli on 15.5.1990. Thereafter, again the raiding party went to Kharsoli. It is the prosecution case that on 15.5.1990, the complainant demanded 7x12 extract. The appellant gave the same to him. However, he demanded money and money i.e. Rs.500/- was given to the appellant. However, it has come in the cross-examination of the complainant that on 15.5.1990 he went to the office of the appellant and

demanded 7x12 extract from him. The appellant thereafter gave him 7x12 extract. The complainant then walked out of the office of the appellant along with panch witness. They had discussion with each other that the appellant did not demand any amount and hence, decided to go back in the office. Accordingly, they entered the office of the appellant. The appellant did not utter a word, however, thereafter the complainant put the currency notes on which the anthracene powder had been applied on the desk of the appellant. Thereafter, he went out of the office and gave a signal to the raiding party. It has also been brought on record through the evidence of the complainant that when he put the currency notes having anthracene powder on the desk of the appellant, the appellant pushed the notes saying that "Hey Kay, Hey Kay" (What is this, what is this?). It is to be noted that only two persons entered the office of the appellant i.e. complainant and panch witness. Looking to the evidence of star witness i.e. the complainant, it cannot be said that the prosecution has conclusively proved that the appellant demanded and accepted Rs.500/- in return and for giving 7x12 extract to the complainant. In such case, I am of the opinion that the appellant is entitled to the benefit of doubt. Moreover, the other evidence which is led by

the prosecution is not of much assistance to the prosecution case as the evidence of the complainant who is the star witness, is not reliable.

9. In the result, this appeal is allowed. The conviction and sentence of the appellant for the offence under Sections 7 and 13(1)(d) r.w. Section 13(2) of the Prevention of Corruption Act, dated 25th January, 1995 passed by the learned Special Judge, Solapur in Special Case No. 2 of 1991 is set aside and the appellant is acquitted thereunder. The fine amount if any, paid by the appellant, be refunded to the appellant. The appellant is on bail. His bail bonds shall stand cancelled.

. Certified copy of this judgment and order is expedited.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL APPEAL NO.83 OF 1995
(Vishnu Vitthal Dhere Vs. The State of Maharashtra)

Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.P.M.Mengane Advocate for Appellant
Shri.A.S.Shitole, A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCTOBER 21, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The appeal is allowed. The conviction and sentence of the appellant for the offence under Sections 7 & 13(1)(d) r.w. Section 13(2) of the Prevention of Corruption Act, dated 25th January, 1995 passed by the learned Special Judge, Solapur in Special Case No. 2 of 1991 is set aside and the appellant is acquitted thereunder. The fine amount if any, paid by the appellant, be refunded to the appellant. The appellant is on bail. His bail bonds shall stand cancelled.

. Certified copy of this judgment and order is expedited.

(V.K.TAHILRAMANI,J.)